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October 12, 2000 - SECRETARY

VIA HAND DELIVERY

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *Discount Communications, Inc.*
Docket No. 00-00230

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Petition for Reconsideration in the above-referenced matter. A copy of the enclosed is being provided to counsel of record.

Very truly yours,

Patrick W. Turner

PWT/jem

Enclosure

POSTED
10-12-00

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

In Re: *Discount Communications, Inc.*
Docket No. 00-00230

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EXECUTIVE SECRETARY

BELLSOUTH'S PETITION FOR RECONSIDERATION

Pursuant to Rule 1220-1-2-.20, BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this Petition for Reconsideration of the TRA's decision on the directory assistance issue in this docket. On September 28, 2000, the Tennessee Regulatory Authority ("TRA") entered an Order addressing both the Lifeline issue and the directory assistance issue in this docket. With regard to the directory assistance issue, the Order states:

the Directors determined, based on the record in this matter, that pursuant to the resale agreement between BellSouth and Discount, that BellSouth was obligated to provide Discount with directory assistance access and usage at no additional charge during the term of the agreement. The Directors concluded that the resale agreement contained two (2) discount rate options -- 16% or 21.56% -- established by previous orders of the Authority. Based upon the Authority's Order in Docket Nos. 96-01152 and 96-01271, the cost of directory access and usage are totally avoided in the 21.56% rate. Further, the Directors determined that under the 16% discount rate option, BellSouth was obligated to provide access to and usage of directory assistance service. The prospect of BellSouth providing these services served as an inducement for resellers to choose the lesser discount.

See Order at 9-10 (footnotes omitted). The Order then requires BellSouth to credit the account of Discount Communications, Inc. ("Discount") for all prior directory assistance charges and to "provide directory assistance access and usage for the

remaining term of the parties' resale agreement at no additional cost to Discount." *Id.* at 10. For the reasons stated below, BellSouth respectfully submits that the TRA should reconsider its ruling on the directory assistance issue and require Discount to pay for the directory assistance services it has and will receive from BellSouth.

I. STATUS OF DISCOUNT'S DEBT

The past-due balance on Discount's account is more than \$200,000. This is the amount that continues to be past-due even after BellSouth credited Discount's account for the amount Discount has paid into the escrow account, for all directory assistance charges BellSouth has billed Discount, and for the Link-Up disputes pending before the FCC. Even after these credits, Discount continues to carry a past-due balance in excess of \$200,000. This should come as no surprise to Discount -- BellSouth informed Discount's counsel of the status of Discount's account following the entry of the TRA's Order in this docket.

In fact, BellSouth has discussed the status of the account with Discount several times since the hearing in this docket. The attached letter of August 25, 2000 (Attachment 1), for instance, confirms that Discount committed to provide BellSouth with documentation supporting the few disputes it purports to have with regard to BellSouth's bill. No such documentation has been provided. Moreover, the attached letter of September 15, 2000 (Attachment 2), confirms the only disputes Discount has presented regarding the past-due balance of its bill, confirms that Discount has not provided documentation supporting these purported disputes,

and once again asks Discount to provide such documentation. Still, no such documentation has been provided.

II. SUMMARY OF ARGUMENT

As explained below, the TRA's Orders in the Avoidable Cost Docket and in the AT&T/MCI Arbitration provide that Discount is entitled to the 21.56% wholesale discount only if it receives operator services and directory assistance from a source other than BellSouth. In that event, Discount pays for the operator services and directory assistance it receives -- Discount either pays a third party to provide operator services and directory assistance, or it pays the additional expenses necessary to provide these services itself.

Pursuant to these same Orders, Discount is entitled to the 16% wholesale discount when it receives operator services and directory assistance from BellSouth. In that event, Discount pays for operator services and directory assistance -- it pays BellSouth the tariffed rates for these services less the 16% wholesale discount. Either way, Discount must pay for any operator services and directory assistance it receives.

Additionally, as explained below, the Resale Agreement incorporates any changes in the tariffed rate of a service. When BellSouth decreased the tariffed rate for Touch Tone, for example, Discount automatically received the benefits of these lower rates. No modification of the Resale Agreement was necessary. Similarly, as Discount's own witness acknowledged, Discount automatically pays a higher wholesale rate for a service when the tariffed rate for that service increases.

(Tr. Vol. II at 354). BellSouth, therefore did not seek to "modify its arrangement with Discount Communications" when it began implementing its tariffed directory assistance rates because no such modification was necessary. See Transcript of June 6, 2000 Director's Conference at 85-86.

Finally, a simple analogy demonstrates that Discount's argument that the difference between the 16% wholesale discount and the 21.56% wholesale discount is the "rate" for directory assistance is wrong. This difference simply reflects the fact that BellSouth incurs more costs when it provides directory assistance than it incurs when it does not provide directory assistance. Similarly, Zenith incurs more costs when it provides a television set with surround-sound than it incurs when it provides an identical television set without surround-sound. Assume, for example, that it costs Zenith \$100 more to provide a set with surround-sound than it costs Zenith to provide an identical set without surround-sound. Under Discount's reasoning, the price (or rate) for a Zenith set with surround-sound would be only \$100 more than the price (or rate) for an identical Zenith set without surround-sound. As every shopper knows, however, the price of an item is greater than the cost of an item, and the price of the Zenith set with surround-sound will exceed the price of the identical set without surround-sound by more than \$100.

The TRA, therefore, should reconsider its ruling on the directory assistance issue in this docket.

III. ARGUMENT

- A. **When Read in Light of the TRA's Orders in the Avoidable Cost Docket and in the AT&T/MCI Arbitration, the Resale Agreement Clearly Requires Discount to Pay the Tariffed Rate for all Service it Receives from BellSouth -- Including the Tariffed Rates for any Operator Services or Directory Assistance that is "Bundled" with those Services -- Less the 16% Wholesale Discount.**

The Resale Agreement Discount signed with BellSouth is not unique -- it is a standard Resale Agreement similar to the type that the TRA has approved on numerous occasions. Exhibit A of the Resale Agreement sets forth the discount that applies to the tariffed rates for services BellSouth provides. In Tennessee, the applicable wholesale discount is 16% off the tariffed rates for the services BellSouth provides to Discount.

There is, of course, one exception: if the reseller obtains operator services and directory services from a source other than BellSouth, the wholesale discount is 21.56% off the tariffed rates for the services BellSouth provides to Discount. Significantly, neither BellSouth nor Discount created this exception. Instead, the TRA created this exception in its Orders in Docket No. 96-01331 (the Avoidable Cost Docket) and Docket Nos. 96-01152 and 96-01271 (the AT&T/MCI Arbitration Dockets). This exception, therefore, must be construed in light of the TRA's Orders in those dockets and the statutes upon which those Orders are based.

1. **As a matter of law, BellSouth is entitled to charge for directory assistance service it provides in the State of Tennessee.**

The Federal Telecommunications Act of 1996 does not govern the retail rates BellSouth may charge its end users for the intra-state telecommunications

services it provides. See 47 U.S.C. §152(b) (With limited exceptions which do not apply to this docket, "nothing in this Act shall be construed to apply or give the [FCC] jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier"). Instead, these rates are governed by state law. In Tennessee, therefore, the price regulation statutes govern the retail rates BellSouth may charge for its intra-state telecommunications services. Before Discount ever signed its Resale Agreement with BellSouth, the TRA had ruled that directory assistance is a non-basic service under those statutes and that an incumbent local exchange telephone company operating under price regulation may charge for directory assistance under those statutes. After Discount signed the Resale Agreement, the TRA approved BellSouth's tariff setting the retail rates BellSouth charges for directory assistance in Tennessee. As a matter of law, therefore, BellSouth is entitled to charge for directory assistance service it provides in Tennessee.

2. **The TRA's Orders in the Avoidable Cost Docket and in the AT&T/MCI Arbitration require resellers like Discount to pay the tariffed rates for any operator services or directory assistance that the reseller receives from BellSouth.**

While state law governs the retail rate for intra-state telecommunications services, the Federal Telecommunications Act of 1996 governs the wholesale rates for such services. Under the Act, the wholesale rate is determined "on the basis of retail rates charged to subscribers for the telecommunications service requested,

excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." See 47 U.S.C. §252(d)(3) (emphasis added). Thus, the wholesale rate a reseller pays for a given service is simply the retail (or tariffed) rate for the service less the avoidable costs associated with the service.

Pursuant to this statute, the TRA established the wholesale discount for BellSouth's retail services in Tennessee in the Avoidable Cost Docket. In establishing this rate, the TRA reached the following decisions:

1. Instead of having different rates for residential, business, or other categories, one wholesale discount rate applies to all services subject to resale;
2. Instead of being set as a fixed dollar amount, the wholesale discount is a set percentage off the tariffed rates; and
3. Services subject to resale are bundled and include operator services and directory assistance.

See Final Order in Docket No. 96-01331 at 5. As a result of that Order, the wholesale rate for any BellSouth service that is subject to resale is the tariffed rate for the service -- including the tariffed rate for any operator services and directory assistance that are bundled with that service -- less the 16% wholesale discount.

The TRA modified this ruling in its Second and Final Order of Arbitration Awards in the AT&T/MCI Arbitration Dockets. In that Order, the TRA decided that through certain arrangements, it was "technically feasible to allow AT&T and MCI to use their own operators, directory assistance, and repair personnel." See Second and Final Order of Arbitration Awards at 27 (emphasis added). See also,

Id. ("As a matter of policy, where AT&T and MCI have their own operators, directory assistance, and repair personnel, they should be given the opportunity to use them.") (emphasis added).

In that same Order, the majority established an additional discount rate which applies when a reseller obtains directory assistance and operator services from a source other than BellSouth. *See Id.* at 50-51. The majority explained that the reason for the additional rate is not that the methodology adopted in the Avoidable Cost Docket has changed or should change. Instead, the majority noted that the "unbundling" of these services would "change the calculation of the avoided cost discount by including one hundred (100%) percent of Account 6621 'Call Completion' and Account 6622 'Number Services' as directly avoided expenses."¹ *Id.* at 50-51. Put another way, the majority determined that BellSouth avoids more costs when it does not provide operator services and directory assistance to a reseller than it avoids when it does provide operator services and directory assistance to a reseller. As a result, the majority "decided to set an additional discount rate for BellSouth retail services of twenty-one and fifty-six one hundredths (21.56%) percent when operator services and directory assistance are not bundled." *Id.* at 50.

¹ When it previously adopted the 16% wholesale discount rate in the Avoidable Cost Docket, the TRA determined that the expenses in these two Accounts were neither directly nor indirectly avoided.

As used in the Order, the phrase "not bundled" clearly means that BellSouth is not providing operator services and directory assistance to the reseller. After all, the TRA had already determined that none of the expenses in these Accounts were either directly or indirectly avoided by BellSouth when it resells its services. The only way BellSouth can avoid 100% of the expenses in these Accounts, therefore, is to simply not provide operator services or directory assistance. Accordingly, a reseller is entitled to the 21.56% wholesale discount only if BellSouth does not provide operator services and directory assistance to the reseller.

Significantly, the Order did nothing to set or adjust any of the tariffed rates for operator services, directory assistance, or any other of BellSouth's intra-state telecommunications services in Tennessee. Nor did the Order change the fact that the applicable wholesale discount is applied to the tariffed rate that is charged for a service BellSouth provides a reseller. Instead, the Order simply provided that a reseller is entitled to a deeper wholesale discount when it obtains operator services and directory assistance through sources other than BellSouth because, in such instances, BellSouth avoids more costs than it avoids when it provides these services to the reseller.

The factor which determines which wholesale discount percentage to apply to a given reseller, therefore, is not whether BellSouth charges the reseller for operator services and directory assistance. See Transcript of June 6, 2000 Directors' Conference at 86. Instead, the factor which determines which wholesale discount percentage to apply to a given reseller is whether that reseller

obtains these services from BellSouth or from a different source. If the reseller obtains these services from BellSouth, it pays BellSouth the tariffed rate for the services BellSouth provides -- including the tariffed rates for the operator services and directory assistance that are bundled with such services -- less the 16% wholesale discount. If the reseller obtains these services from another source, it pays BellSouth the tariffed rates for the services BellSouth provides less the 21.56% wholesale discount.

Accordingly, it is not inconsistent for BellSouth to apply the 16% wholesale discount to Discount and to charge Discount for directory assistance. *See* Tr. at 86. After all, Discount must pay for operator services and directory assistance no matter how it obtains these services. If it obtains these services from BellSouth, it must pay BellSouth the tariffed rates for these services less the 16% wholesale discount. If, on the other hand, Discount obtains these services from some other source, it pays BellSouth the tariffed rates for the service it receives from BellSouth less the 21.56% wholesale discount. In that case, however, Discount either pays a third party to provide operator services and directory assistance, or it pays the additional expenses necessary to provide these services for itself.

Discount has elected not to pay another source for these services, and it has elected not to incur the expense of providing these services itself. Instead, Discount has elected to receive these services from BellSouth or, in the words of the Order in the Avoidable Cost Docket, Discount has elected to have these services bundled with the other services it receives from BellSouth. Discount,

therefore, is obligated to pay BellSouth for these services, and the rate it is obligated to pay is the tariffed rate for these services less the 16% wholesale discount.

3. **It is clear that the difference between the 16% wholesale discount and the 21.56% wholesale discount does not represent the "rate" for directory assistance.**

A simple analogy demonstrates that Discount's argument that the difference between the 16% wholesale discount and the 21.56% wholesale discount is the "rate" for directory assistance is wrong. As explained above, this difference simply reflects the fact that BellSouth incurs more costs when it provides directory assistance than it incurs when it does not provide directory assistance. Similarly, Zenith incurs more costs when it provides a television set with surround-sound than it incurs when it provides the same television set without surround-sound. Assume, for example, that it costs Zenith \$100 more to provide a set with stereo surround-sound than it costs Zenith to provide an identical set without stereo surround-sound. Under Discount's reasoning, the price (or rate) for a Zenith set with surround-sound would be only \$100 more than the price (or rate) for an identical Zenith set without surround-sound. As every shopper knows, however, the price of an item is greater than the cost of an item, and the price of the Zenith set with surround-sound will exceed the price of the identical set without surround-sound by more than \$100.

Additionally, as noted above, the 21.56% wholesale discount was not the result of any negotiations between BellSouth and Discount. Instead, it was the

result of TRA Orders implementing the resale pricing provisions of the Telecommunications Act of 1996. The 1996 Act, in turn, provides that the wholesale rate for a service is the retail rate for the service less the avoidable costs associated with the service. Stated mathematically,

$$\text{Wholesale Rate} = \text{Tariffed Rate} - \text{Avoidable Costs}$$

To determine the Wholesale Rate for a service, therefore, it is necessary to subtract the appropriate amount of Avoidable Costs from the Tariffed Rate. Using this statutory formula, it is impossible to determine the Wholesale Rate for a given service if all that is known is that the Avoidable Costs in one situation is \$1 and that the Avoidable Costs in another situation is \$1.50.

The difference between the 16% wholesale discount and the 21.56% wholesale discount, however, is nothing more than the difference between the Avoidable Costs in two different situations. Standing alone, this difference does not (and cannot) represent the wholesale rate for any service. Instead, the Wholesale Rate for a service is determined by subtracting the amount of Avoidable Costs applicable to the situation from the Tariffed Rate of a service. With regard to directory assistance services BellSouth provides to Discount, the tariffed rate for local directory assistance is \$0.29 after the first six calls, and the avoided costs when Discount receives directory assistance from BellSouth is \$0.05 (\$0.29 x 16%). The wholesale rate for directory assistance, therefore, is \$0.24 after the first six calls (\$0.29 - \$0.05).

B. The Resale Agreement Clearly does not Allow Discount to Receive, Free of Charge, a Service for which Retail Customers Must Pay.

The language of the Resale Agreement plainly and unambiguously states that the applicable tariffs govern the terms and conditions of services Discount purchases for resale. The Agreement defines "resale" as "an activity wherein a certificated OLEC, such as Discount Communications, subscribes to the telecommunications services of [BellSouth] and then reoffers those telecommunications services to the public (with or without "adding value")." Agreement §II.G (emphasis added). Discount Communications "may resell the tariffed local exchange and toll telecommunications services of BellSouth contained in the General Subscribers Service Tariff and Private Line Service Tariff subject to the terms, and conditions specifically set forth herein." *Id.*, §III.A (emphasis added). The Agreement further provides that

Resold services can only be used in the same manner as specified in [BellSouth's] Tariff. Resold services are subject to the same terms and conditions as are specified for such services when furnished to an individual end user of [BellSouth] in the appropriate section of [BellSouth's] Tariffs. Specific Tariff features, e.g. a usage allowance per month, shall not be aggregated across multiple resold services. Resold services cannot be used to aggregate traffic from more than one end user customer except as specified in Section A23 of [BellSouth's] Tariff referring to Shared Tenant Service.

Id., §IV.B (emphasis added).

This approved Resale Agreement is binding on the parties. The language of the Resale Agreement plainly and unambiguously states that the applicable tariffs govern the terms and conditions of services Discount purchases for resale. The

TRA, therefore, must look to the applicable tariffs to decide Discount's claims, because "[w]hen the language of a contract is plain and unambiguous, it is the court's duty to interpret it and enforce it as written." *Kiella v. McHargue*, 976 S.W.2d 658, 661 (Ct. App. 1998).

C. Discount's Resale Agreement Requires it to Pay BellSouth the Tariffed Rates That Exist at the Time a Service is Provided Less the Wholesale Discount.

When his own counsel asked, "What does [the first Resale Agreement] say about directory assistance," Discount's witness replied that "[t]he wholesale discount is set as a percentage off the tariff rates." (Tr. Vol. II at 250) (emphasis added). Later, Discount's witness had the following exchange with Director Greer:

Q. And if, in fact, a tariff changes, then aren't you subject to that tariff according to this [first] agreement you signed?

A. Yes, sir, if there was a tariff to start with.²

(Tr. Vol. II at 354). Discount's witness is absolutely correct: the Resale Agreement unambiguously requires Discount to pay BellSouth the tariffed rate for directory assistance less the wholesale discount. Section I.C, for instance, provides that:

The rates pursuant by (sic) which Discount Communications is to purchase services from BellSouth for resale shall be at a discount rate off of the retail rate for the telecommunications service. The discount rates shall be as set forth in Exhibit A, attached hereto and incorporated herein by this reference. Such discounts shall reflect the costs avoided by BellSouth when selling a service for wholesale purposes.

² At the time the first Resale Agreement was signed, BellSouth obviously had a directory assistance tariff. (See Attachment 3).

(Emphasis added). (Tr. Ex. 18 at §I.C) (Tr. Ex. 8, Attachment 1, Page 3 at §1). Section III.A of the Resale Agreement reiterates that "BellSouth shall make available telecommunications services for resale at the rates set forth in Exhibit A to this Agreement" (Emphasis added). (Tr. Ex. 18 at §III.C) (Tr. Ex. 8, Attachment 1, Page 4, at §3.2).

Exhibit A to the Resale Agreement, in turn, provides that "[t]he telecommunications services available for purchase by Discount Communications for the purpose of resale to Discount Communications' end users shall be available at the following discount off of the retail rate." (Tr. Ex. 18, Exhibit A) (Tr. Ex. 8, Attachment 1, Page 17). This Exhibit clearly states that the discount rate applicable in Tennessee is 16%. (*Id.*) This Exhibit also plainly provides that in Tennessee, "the Wholesale Discount is set as a percentage off the tariffed rates. If OLEC (sic) provides its own operator services and directory services, the discount shall be 21.56%." (Emphasis added). (Tr. Ex. 18, Exhibit A). Like every other reseller of BellSouth's services in the State of Tennessee, Discount clearly agreed to pay BellSouth the tariffed rate for the services being resold less the applicable resale discount.

In fact, Discount has admittedly reaped the benefits of the fact that the Resale Agreement requires it to pay the tariffed rates that exist at the time a service is provided less the wholesale discount for that service. When Discount started reselling BellSouth's service, it paid BellSouth 84% of the \$1.50 tariffed

rate for Touch Tone. (Tr. Vol. II at 305). BellSouth then began reducing its tariffed rate for Touch Tone, and as Discount's witness acknowledged:

Q. [A]s [BellSouth] reduced [the tariffed rate for Touch Tone], whatever the tariff said, [BellSouth] took 16% off that rate and charged you the rate in effect at the time for the Touch Tone less 16 percent, correct?

A. Correct.

(Tr. Vol. II at 305). Discount's witness also acknowledged that if BellSouth had applied the wholesale discount to the tariffed rate for Touch Tone that had existed on the date the first Resale Agreement was entered rather than applying the discount to the then-existing tariffed rate for Touch Tone, Discount would have protested. (Tr. Vol. II at 306-07). Clearly, Discount understood that the first Resale Agreement required it to pay the tariffed rate as of the date a particular service was provided less the 16% wholesale discount.

The Resale Agreement, therefore, automatically incorporates any changes in the tariffed rate of a service. When BellSouth decreased the tariffed rate for Touch Tone, Discount automatically received the benefits of these lower rates. No modification of the Resale Agreement was necessary. Similarly, as noted above, Discount's own witness acknowledged that Discount automatically pays a higher wholesale rate for a service when the tariffed rate for that service increases. (Tr. Vol. II at 354). BellSouth, therefore did not seek to "modify its arrangement with Discount Communications" when it began implementing its tariffed directory

assistance rates because no such modification was necessary. See Transcript of June 6, 2000 Director's Conference at 85-86.

D. Discount's Purported Belief That the First Resale Agreement Prevents BellSouth from Charging Discount for Directory Assistance is Irrelevant, and it is Discredited by Discount's Own Actions.

As noted above, the Resale Agreements unambiguously require Discount to pay for directory assistance. Thus parol evidence regarding Discount's purported state of mind at the time the first Resale Agreement was signed should not be considered.³ To the extent that the TRA considers such parol evidence, however, it should reject it altogether as being entirely inconsistent with Discount's actions.

Discount bases its claim that it is not required to pay for directory assistance on its purported belief "that directory assistance is included in the 16 percent that we're already paying for access to directory assistance in the directory assistance usage." (Tr. Vol. II at 250-51).⁴ Discount's witness testified that he had this belief

³ Under Tennessee law, "[c]ourts are to interpret and enforce the contract as written, according to its plain terms," and "[w]hen clear contract language reveals the intent of the parties, there is no need to apply rules of construction." *Warren v. Metropolitan Government of Nashville and Davidson County*, 955 S.W.2d 618, 623 (Tenn. Ct. App. 1997). More significantly, "an ambiguity does not arise in a contract merely because the parties may differ as to interpretation of certain provisions." A contract is ambiguous only when it is of uncertain meaning and may fairly be understood in more ways than one; a strained construction may not be placed on the language used to find an ambiguity where none exists." *Id.*

⁴ As noted above, this purported belief is wrong as a matter of law. Moreover, to the extent that Discount developed this belief, it did so at its own peril. Discount's witness acknowledged that he signed the first Resale Agreement without seeking any guidance or advice regarding BellSouth's ability to charge for directory assistance from an attorney, the staff of the TRA, or anyone else. (Tr. Vol. II at 327). Had Discount sought such guidance or advice at the time it signed

at the time he signed the first Resale Agreement, (Tr. Vol. II at 328-29), and he testified that this has been Discount's position from the beginning of Discount's disputes regarding directory assistance. (Tr. Vol. II at 329). Discount's witness also testified that if he thought BellSouth could charge for directory assistance, Discount would have "petitioned the TRA to arbitrate that [charges for directory assistance] would be inclusive" in the 16% wholesale discount provisions of the Resale Agreement. (Tr. Vol. II at 260-61). Discount's statements under oath in this proceeding are best summarized accordingly:

Q. Is it fair to say that if you knew then what you know now, you would have asked for some different language in that resale agreement?

A. Precisely.

(Tr. Vol. II at 343) (emphasis added).

Discount's actions, however, do not bear this out. While Discount claims that from the very beginning it believed that directory assistance was included in the 16% wholesale discount under the first Resale Agreement, not a single word in

the first Resale Agreement on March 12, 1998, it likely would have discovered that the price regulation statutes had gone into effect some 20 months earlier and that the TRA had issued a final order stating that "directory assistance is a non-basic service under Tennessee Code Annotated § 65-5-208(a)" some six months earlier. See September 4, 1997 Order in Docket No. 96-01423 at 17 (emphasis added). The law in effect at the time the contract was signed, therefore, clearly allowed BellSouth to "set rates for [directory assistance] as the company deems appropriate" T.C.A. § 65-5-209(h). Discount, however, developed its purported "belief" that BellSouth could not charge for directory assistance "mainly because directory assistance hadn't ever been charged," (Tr. Vol. II at 326), and it now improperly asks the TRA to relieve it from the consequences of its own failure to make itself aware of the law governing its business decisions.

the complaints Discount registered with the TRA Staff states this purported belief. (Tr. Vol. II at 341).⁵ In fact, the first time this argument appears is in the pre-hearing briefs Discount filed in this docket. (Tr. Vol. II at 341).

Even more telling, however, is the fact that Discount signed a new Resale Agreement with BellSouth in February 2000. (Tr. Vol. II at 246-47). According to Discount's witness, this new Resale Agreement is, "for all practical purposes, the same resale agreement that [Discount] signed back in 1998." (Tr. Vol. II at 333-34). When it signed this new Resale Agreement, Discount knew that BellSouth could charge for directory assistance, it knew that BellSouth had been charging for directory assistance, and it knew that BellSouth intended to continue charging for directory assistance. (Tr. Vol. II at 343). Discount, however, did not ask for any language referencing directory assistance to be placed in the new Resale Agreement. (Tr. Vol. II at 345). Nor did Discount ask the TRA to act as arbitrators with regard to the new Resale Agreement. (Tr. Vol. II at 345).

Instead, Discount simply signed the new Resale Agreement which it acknowledges is "for all practical purposes, the same resale agreement that [Discount] signed back in 1998." (Tr. Vol. II at 333-34). The same witness who signed this new Agreement is the witness who testified, under oath, that:

⁵ Instead, these documents primarily discuss billing blocks. One of these documents for instance, states "Discount Communications will entertain the following option: 1. Discount Communications is opting to provide and/or offer directory assistance to Discount's Customers directory assistance as referenced by the TRA (Tennessee Regulatory Authority) Order in Tennessee" (Sic) (Tr. Ex.

(1) Discount believed that directory assistance was included in the 16% wholesale discount; (2) Discount would have "petitioned the TRA to arbitrate that [charges for directory assistance] would be inclusive" in the 16% provisions of the Resale Agreement if it had known that BellSouth intended to charge Discount for directory assistance; and (3) Discount would have asked for different language in the Resale Agreement had it known BellSouth intended to charge Discount for directory assistance.

Discount's witness tried to explain away the signing of the new Resale Agreement by suggesting that Discount felt powerless to either ask for different terms or to ask the TRA to arbitrate the agreement. (Tr. Vol. II at 345-46). The same company, however, certainly felt empowered to contact state legislators, (see Tr. Ex. 6, 17) federal legislators (*id.*), the CAD, (CAD's Petition to Intervene, Ex. B), the TRA Staff (Tr. Ex. 4, 5, 6, 7, & 17), and anyone else who would listen to its complaints against BellSouth. Moreover, as noted from the bench during the hearing, Discount was under absolutely no pressure to sign a new Resale Agreement in February 2000. The first Resale Agreement provided that it was automatically renewed for "two additional one-year periods" unless either party indicated in writing its intent not to renew "within 60 days prior to the then-existing contract period." (Tr. Vol. II at 348) (Ex. 18 at §I.B). Discount concedes that it never received such a written notice, (Tr. Vol. II at 348), and Discount's

7). Even to this day, however, Discount admits that it is not technically capable of providing operator services or directory assistance services. (Tr. Vol. II at 339).

witness acknowledged that Director Greer was correct in stating that any pressure Discount felt to sign the new Resale Agreement was self-imposed. (Tr. Vol. II at 348).

CONCLUSION

For the reasons set forth above, the TRA should reconsider its ruling on the directory assistance issues and require Discount to pay for the directory assistance services it has and will receive from BellSouth.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: Patrick Turner
Guy M. Hicks
Patrick W. Turner
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Nashville, Tennessee 37201-3300
(615) 214-6301

231426

CERTIFICATE OF SERVICE

I hereby certify that on October 12, 2000, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☐ Hand
- ☒ Mail
- ☒ Facsimile
- ☐ Overnight

Henry Walker, Esquire
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- ☐ Hand
- ☒ Mail
- ☒ Facsimile
- ☐ Overnight

Vance Broemel, Esquire
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Patrick Tume

ATTACHMENT 1

BellSouth Telecommunications, Inc.
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Fax 615 214-7406

Patrick Turner
Attorney

August 25, 2000

**VIA TELECOPIER
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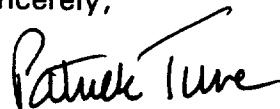
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Nashville, Tennessee 37219-8062

Re: Discount Communications, Inc.
Docket No. 00-00230

Dear Henry:

Attached are the final versions of the Proposed Settlement Agreement and the Petition for Approval of Amendment to Resale Agreement Negotiated Between BellSouth Telecommunications, Inc. and Discount Communications Pursuant to the Telecommunications Act of 1996. I would like to confirm my understanding that Discount has agreed to the terms of these documents and that all we are waiting on now is for Discount to provide documentation: (1) supporting its claims for the \$4040 in promotional credits referenced in paragraph 3(B) of the Proposed Settlement Agreement; (2) showing which Discount Link-up end users who signed on after April 12, 2000 and before August 1, 2000 did not get any Link-up credit; and (3) showing the total number of Link-up end users Discount has signed up to date. If my understanding is not correct, please notify me immediately.

Sincerely,



Patrick W. Turner

PWT/jem

Enclosure

ATTACHMENT 2

BellSouth Telecommunications, Inc. 615 214-6311
2101 Fax 615 214-7406
333 Commerce Street
Nashville, Tennessee 37201-3300

Patrick Turner
Attorney

September 15, 2000

**VIA TELECOPIER
(615) 252-6363**

Henry Walker, Esquire
Boult, Cummings, Conners & Berry
414 Union Street, Suite 1600
Post Office Box 198062
Nashville, Tennessee 37219-8062

Re: Discount Communications, Inc.
Docket No. 00-00230

Dear Henry:

Over the past several weeks I have asked that Discount identify and document all alleged billing disputes other than the directory assistance and Lifeline disputes that were the subject of this docket. In response to that request, Discount identified the following alleged disputes:

1. \$4,040 regarding credits it allegedly did not receive for certain unspecified promotional offerings (see ¶3B of the attached Proposed Settlement Agreement);
2. \$6,400 regarding "conceded Link-Up credits" (see ¶3C of the attached Proposed Settlement Agreement);
3. \$14,500 regarding "contested Link-Up credits" (see ¶3D of the attached Proposed Settlement Agreement); and
4. \$26,000 in "unconfirmed payments" (see ¶3E of the attached Proposed Settlement Agreement).

No other alleged disputes were identified by Discount.

Henry Walker, Esquire
September 15, 2000
Page 2

Although Discount has identified these alleged disputes, Discount has not provided BellSouth any documentation concerning these disputes. Nor has Discount arranged for any discussions between BellSouth, Discount, and Discount's bank to discuss the \$26,000 in "unconfirmed payments."

Please sent me any documentation Discount has regarding these alleged disputes, and please have someone from Discount contact Claude Morton immediately to arrange a time for BellSouth, Discount, and Discount's bank to discuss the "unconfirmed payments."

Finally, please make arrangements to have your firm remit the entire balance of the escrow account to BellSouth immediately upon the entry of the majority's written order in this docket.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patrick".

Patrick W. Turner

PWT/jem

Enclosure

ATTACHMENT 3

SOUTH CENTRAL BELL
TELEPHONE COMPANY
TENNESSEE
ISSUED: May 16, 1994
BY: President - Tennessee
Nashville, Tennessee

GENERAL SUBSCRIBER SERVICES TARIFF

Fourth Revised Page 54.1
Cancels Third Revised Page 54.1

EFFECTIVE: June 23, 1994

A3. BASIC LOCAL EXCHANGE SERVICE

A3.12 Network Access Register Usage Package (Cont'd)

A3.12.3 Reserved For Future Use

A3.13 Local Directory Assistance Service

This service is a Flex-Price service and is regulated under terms and conditions as described in A2.3.26 of this Tariff. (N)

A3.13.1 General

- A. In addition to providing telephone directories to all Local Exchange Service subscribers, the Company furnishes Local Directory Assistance Service whereby customers may obtain assistance in determining telephone numbers, directory addresses and ZIP Codes. (N)
- B. The charging application and rates set forth in A3.13.2. and 3. following apply to Sent-Paid Mobile Service Provider (MSP) requests for Local Directory Assistance Service in determining, or attempting to determine, the telephone number and/or address of any party located in, or thought to be located in, the local calling area. (N)
- C. Local Directory Assistance Service Allows A Subscriber To Provide
 - 1. a name to get telephone number, ZIP Code and/or directory address (N)
- D. Local Directory Assistance Service does not provide the telephone number, address or ZIP Code on a private (nonpublished) listing but does furnish these items from informational records on a semiprivate listing. (N)

A3.13.2 Application Of Charges

- A. The charges specified in A3.13.3. following will be applicable to all Mobile Service Providers (MSPs). (N)
- B. Chargeable Calls (N)

For charging purposes a call to Local Directory Assistance is defined as a call

- 1. resulting in obtaining telephone number, address and/or ZIP Code for a maximum of two subscribers; or (N)
- 2. resulting in obtaining no telephone number, address and ZIP Code; because there was no such listing, or there was a private listing. (N)

A3.13.3 Rates And Charges

- A. Service Charges (N)

- 1. Each call (N)

- (a) Directory assistance service charge (N)

Charge Per Call	USOC
\$.30	NA

A3.14 Operator Assisted Local Calls And Local Calling Card Service Calls

This service is a Flex-Price service and is regulated under terms and conditions as described in A2.3.26 of this Tariff. (N)

A3.14.1 General

- A. When the caller requests operator assistance and the call is completed within the local calling area, a service charge will be applied except as specified in A3.14.2.A. (M)

Material previously appearing on this page now appears on page(s) 54.1.1 of this section